

1 **UNITED STATES DISTRICT COURT FOR THE**
2 **NORTHERN DISTRICT OF INDIANA**
3 **SOUTH BEND DIVISION**

4 **BORIS K. PEREDO AND**
5 **TIFFANY MARIE PEREDO**

6 *Plaintiffs*

7 **v.**

8 **FOREST RIVER, INC.**

9 *Defendants*

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CIVIL ACTION NO:

JURY TRIAL REQUESTED

10 **COMPLAINT**

11 **I. Parties**

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13 1. Plaintiffs, BORIS K. PEREDO and TIFFANY MARIE PEREDO, are individuals
14 that now and have been at all times citizens of the state of Virginia.

15 2. Defendant, FOREST RIVER, INC., hereinafter "FOREST RIVER," is an Indiana
16 corporation that was incorporated in the state of Indiana and is a citizen of the state of Indiana. Its
17 principal place of business is located in the state of Indiana and is a warrantor of the recreational
18 vehicle that Plaintiffs purchased and is a merchant in goods of the kind involved in this case.

19 FOREST RIVER's agent for service of process is Darrel O. Ritchie, 900 County Road
20
21 1, Elkhart, IN, 46514.

22 **II. Jurisdiction**

23
24 3. This Court has federal question jurisdiction over the lawsuit under the
25 Magnuson-Moss Warranty Act pursuant to 15 USC § 2310(d); and 28 USC § 1331 in that the
26 disputes involve predominant issues of federal law.
27
28

1 This court has jurisdiction over the lawsuit under 28 U.S.C. §1332(a)(1) because
2 Plaintiffs and the Defendants are citizens of different states and the amount in controversy exceeds
3 \$75,000.00, excluding interest and costs.
4

5 This court also has supplemental jurisdiction under 28 USC § 1367 over Plaintiffs's
6 state law claims because said claims are so related to the claims within the Court's original
7 jurisdiction that they form part of the same case or controversy under Article 3 of the United States
8 Constitution.
9

10 **III. Venue**

11 4. Venue is proper in this district under 28 U.S.C. §1391(a)(3) because the Defendants
12 are subject to personal jurisdiction in this district and there is no other district where the suit may be
13 brought.
14

15 **IV. Conditions Precedent**

16 5. All conditions precedents have been performed or have occurred.
17

18 **V. Facts**

19 **A. The Transaction**

20 6. On May 17, 2023, Plaintiffs purchased a new 2023 FOREST RIVER ALPHA WOLF
21 26RL-L bearing VIN: 5ZT2CKRB2P2011837, hereinafter "ALPHA WOLF," from CAMPING
22 WORLD RV SALES.
23

24 The ALPHA WOLF was purchased primarily for Plaintiffs's personal use. The
25 purchase price was \$50,884.30. Civil or Punitive penalties for breach of warranty are recoverable
26 under the Warranty Act, if they are recoverable for breach of warranty under the applicable state law.
27
28

1 See Hughes v. Segal Enterprises, Inc., 627 F. Supp. 1231, 1238 (W.D. Ark. 1986); Chariton Vet
2 Supply, Inc. v. Moberly Motors Co., 2:08CV47MLM, 2009 WL 1011500 (E.D. Mo. Apr. 15,
3 2009).

4 **B. Implied Warranties**

5
6 7. As a result of the sale of the ALPHA WOLF by Defendants to Plaintiffs, an implied
7 warranty of merchantability arose in the transaction which included the guarantee that the ALPHA
8 WOLF would pass without objection in the trade under the contract description; and that the ALPHA
9 WOLF was fit for the ordinary purpose for which such ALPHA WOLF are purchased.

10
11 8. Subsequent to the sale, an implied warranty arose in connection with the repairs
12 performed by the Defendants. Specifically, the Defendants impliedly warranted that the repair work
13 had been performed in a good and workmanlike manner.

14 **C. Express Warranties**

15
16 9. In addition to the implied warranties that arose in the transaction, certain
17 representations and express warranties were made, including, that any malfunction in the ALPHA
18 WOLF occurring during a specified warranty period resulting from defects in material or
19 workmanship would be repaired, and that repair work on the ALPHA WOLF had, in fact, repaired
20 the defects.

21
22 10. Plaintiffs' purchase of the ALPHA WOLF was accompanied by express warranties
23 offered by the Defendants, ALPHA WOLF, and extending to Plaintiffs. These warranties were part
24 of the basis of the bargain of Plaintiffs' contract for purchase of the ALPHA WOLF.

25
26 11. The basic warranty covered any repairs or replacements needed during the warranty
27 period due to defects in factory materials or workmanship. Any required adjustments would also be
28

1 made during the basic coverage period. All warranty repairs and adjustments, including parts and
2 labor, were to be made at no charge. Additional warranties were set forth in the ALPHA WOLF's
3 warranty booklet and owners manual.
4

5 **D. Actionable Conduct**

6 12. In fact, when delivered, the ALPHA WOLF was defective in materials and
7 workmanship, with such defects being discovered within the warranty periods. Many defective
8 conditions have occurred since purchase, including, but not limited to, the following statement in
9 the Plaintiffs' own words:
10

- 11 **1. SLIDE OUT CABLE DEFECTS, NON-**
12 **CONFORMITIES AND CONDITIONS;**
13 **2. ANY AND ALL DEFECTS, NON-CONFORMITIES**
14 **AND CONDITIONS LISTED ON ANY REPAIR**
15 **ORDER.**
16 **6. TOTAL OUT-OF-SERVICE DAYS - OVER 270."**

17 13. Since purchase, Plaintiffs have returned his ALPHA WOLF to the Defendants and
18 its authorized warranty service dealers for repairs on numerous occasions. Despite this prolonged
19 period during which Defendants were given the opportunity to repair the ALPHA WOLF the more
20 significant and dangerous conditions were not repaired. Defendants failed to repair the ALPHA
21 WOLF so as to bring it into conformity with the warranties set forth herein. From the date of its
22 purchase, the ALPHA WOLF continues to this day to exhibit some or all of the non-conformities
23 described herein.
24

25 14. The defects experienced by Plaintiffs with the ALPHA WOLF substantially impaired
26 its use, value and safety.
27
28

1 15. Plaintiffs directly notified the Defendants of the defective conditions of the ALPHA
2 WOLF. Plaintiffs notified the Defendants that they wanted a rescission of the sale of ALPHA
3 WOLF but the Defendants has failed and refused to buy back Plaintiffs' defective ALPHA WOLF.
4

5 **VI. Causes of Action**

6 **COUNT 1: VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**

7 16. Plaintiffs re-allege and incorporate by reference as though fully set forth herein each
8 and every allegation contained in the preceding paragraphs.
9

10 17. Plaintiffs is a "consumer" as defined in the Magnuson-Moss Warranty Act
11 (hereinafter "Warranty Act"), 15 U.S.C. § 2301(3).
12

13 18. Defendants, ALPHA WOLF, is a "supplier" and "warrantor" as defined in the
14 Warranty Act, 15 U.S.C. § 2310(4) and (5).
15

16 19. The ALPHA WOLF is a "consumer product" as defined in the Warranty Act, 15
17 U.S.C. § 2301(l), because it is normally used for personal purposes and Plaintiffs in fact purchased
18 it wholly or primarily for personal use.
19

20 20. The express warranties more fully described hereinabove pertaining to the ALPHA
21 WOLF is a "written warranty" as defined in the Warranty Act, 15 U.S.C. § 2301(6).
22

23 21. The actions of Defendants in failing to tender the ALPHA WOLF to Plaintiffs free
24 of defects and refusing to repair or replace the ALPHA WOLF tendered to Plaintiffs constitute a
25 breach of the written and implied warranties covering the ALPHA WOLF and hence a violation of
26 the Magnuson-Moss Warranty Act.
27

28 22. Plaintiffs have performed all things agreed to and required of them under the purchase
agreement and warranty, except as may have been excused or prevented by the conduct of

1 Defendants as herein alleged.

2 23. As a direct and proximate result of the acts and omissions of Defendants and each of
3 them as set forth hereinabove, Plaintiffs have been damaged hereinabove in an amount in excess of
4 \$500,000.00 according to proof at trial.

5
6 24. Pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(2), Plaintiffs is
7 entitled to recover as part of the judgment, costs and expenses of the suit including attorney's fees
8 based on actual time expended. As a proximate result of the misconduct of Defendants as alleged
9 herein, and in an effort to protect their rights and to enforce the terms of the agreement as more
10 particularly set forth above, it has become necessary for Plaintiffs to employ the legal services of
11 Richard C. Dalton. Plaintiffs have incurred and continue to incur legal fees, costs and expenses in
12 connection therewith.
13
14

15 **COUNT 2: BREACH OF EXPRESS WARRANTIES**

16 25. Plaintiffs re-allege and incorporate by reference as though fully set forth herein each
17 and every allegation contained in the preceding paragraphs those similarly situated were free from
18 inherent risk of failure or latent defects. In addition, the Defendants issued an expressed written
19 warranty which covered ALPHA WOLF, and warranted that the ALPHA WOLF, was free of defects
20 in materials and work quality at the time of delivery.
21

22 26. The Defendants' advertisements and statements in written promotional and other
23 materials contained broad claims amounting to a warranty that Plaintiffs's ALPHA WOLF was free
24 of defects in materials and work quality at the time of delivery.
25

26 27. As alleged above, the Defendants breached its warranties by offering for sale, and
27 selling as safe to Plaintiffs a ALPHA WOLF that was latently defective, unsafe, and likely to cause
28

1 economic loss to Plaintiffs.

2 28. In breach of the foregoing warranties, the Defendants has failed to correct said
3 defects.
4

5 29. The damages Plaintiffs have suffered are a direct and proximate result of Defendants'
6 actions in this matter include, but are not limited to, diminution in value of the ALPHA WOLF; costs
7 of repairs; expenses associated with returning the ALPHA WOLF for repeated repair attempts; loss
8 of wages; loss of use; damages; and attorney fees.
9

10 **COUNT 3: BREACH OF IMPLIED WARRANTIES**

11 30. Plaintiffs re-allege and incorporate herein by reference each and every allegation set
12 forth in the preceding paragraphs.
13

14 31. The Defendants impliedly warranted that Plaintiffs' ALPHA WOLF which it
15 designed, manufactured, and sold, were merchantable and fit and safe for their ordinary use, not
16 otherwise injurious to consumers, and would come with adequate safety warnings.
17

18 32. Any purported limitation of the duration of the implied warranties contained in the
19 written warranties given by Defendants are unreasonable and unconscionable and void under the
20 principles of estoppel, because Defendants knew the defects existed and might not be discovered,
21 if at all, until the ALPHA WOLF had been driven for a period longer than the period of the written
22 warranty, and Defendants willfully withheld information about the defects from Plaintiffs.
23

24 33. Because of the defects, Plaintiffs's ALPHA WOLF is unsafe and unfit for use and has
25 caused economic loss to the Plaintiffs. Therefore, the Defendants breached the implied warranty of
26 merchantability.
27

28 34. The damages Plaintiffs have suffered are a direct and proximate result of

1 Defendants's actions in this matter include, but are not limited to, diminution in value of the ALPHA
2 WOLF; costs of repairs; expenses associated with returning the ALPHA WOLF for repeated repair
3 attempts; loss of wages; loss of use; damages; and attorney fees.
4

5 **VII. Economic and Actual Damages**

6 35. Plaintiffs sustained the following economic and actual damages as a result of the
7 actions and/or omissions of Defendants described herein above:
8

- 9 a.. Out of pocket expenses, including but not limited to the money paid towards
10 the note securing the ALPHA WOLF;
- 11 b. Loss of use;
- 12 c. Loss of the "benefit of the bargain";
- 13 d. Diminished or reduced market value; and
- 14 e. Costs of repairs.
15

16 **VIII. Attorney Fees and Costs**

17 36. Plaintiffs are entitled to recover as part of the judgment, costs and expenses of the suit
18 including attorney's fees based on actual time expended. As a proximate result of the misconduct
19 of Defendants as alleged herein, and in an effort to protect their rights and to enforce the terms of
20 the agreement as more particularly set forth above, it has become necessary for Plaintiffs to employ
21 the legal services of Richard C. Dalton. Plaintiffs have incurred and continue to incur legal fees,
22 costs and expenses in connection therewith.
23

24 **IX. Prayer**

25 37. For these reasons, Plaintiffs prays for judgment against the Defendants for the
26 following:
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- a. For general, special and actual damages according to proof at trial;
- b. Rescinding the sale of the 2023 FOREST RIVER ALPHA WOLF 26RL-L bearing VIN: 5ZT2CKRB2P2011837 and returning to Plaintiffs the purchase price including all collateral costs at the time of the sale, any and all finance charges, insurance premiums, maintenance costs, repair costs, and damages;
- c. For incidental and consequential damages according to proof at trial;
- d. Out of pocket damages for expenditures related to any cost of repairs, deductibles; and towing charges.
- e. Any diminution in value of the ALPHA WOLF attributable to the defects;
- f. Past and future economic losses;
- g. Prejudgment and post-judgment interest;
- h. Damages for loss of use of ALPHA WOLF;
- i. Civil Penalties and/or Punitive damages;
- j. Damages for mental anguish;
- k. Attorney fees;
- l. Costs of suit, expert fees and litigation expenses; and
- m. All other relief this Honorable Court deems appropriate.

X. Demand for Jury Trial

38. Plaintiffs hereby demand a trial by jury to the extent authorized by law.

1 RESPECTFULLY SUBMITTED:

2 BY: /s/ *Richard C. Dalton*

3 Richard C. Dalton

4 Texas Bar No. 24033539

5 Louisiana Bar No. 23017

6 California Bar No. 268598

7 P.O. Box 358

8 Carencro, Louisiana 70520

9 rick@rickdalton.law

10 Tel. (337) 371-0375

11 ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on April 18,2024, I electronically filed this document through the CM/ECF system, which will send a notice of electronic filing to all parties through their attorney of record on file with the court.

Richard C. Dalton

RICHARD C. DALTON